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METROPOLITAN HOUSING AUTHORITY—AUTHORITY TO EXPEND FUNDS UNDER ITS CONTROL TO PURCHASE RETIREMENT ANNUITIES AND DEATH BENEFITS FOR EMPLOYEES—CONTRACT OF EMPLOYMENT WITH EMPLOYEES.

SYLLABUS:

A Metropolitan Housing Authority has the authority to expend funds under its control for the purpose of purchasing retirement annuities and death benefits for its employes when such is part of the contract of employment with its employes.

Columbus, Ohio, December 13, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have your request for my opinion, which reads as follows:

"A question has arisen in connection with this examination of the Cincinnati Metropolitan Housing Authority records, concerning the legality of certain expenditures from M. H. A. funds for the purchase of retirement annuities and death benefits for employes of the Cincinnati M. H. A. Since the answer to this question is necessary before we can complete the audit of this housing authority, may we request that you give consideration to and furnish us your formal opinion in answer to the following question:

"Can a Metropolitan Housing Authority, organized under the provisions of Section 1078-29 et seq., General Code, enter into an agreement to purchase retirement annuities and death benefits for its employes?"

In Opinions of the Attorney General for 1940, No. 3188, the then Attorney General ruled as follows:

“A metropolitan housing authority is expressly created by statute as a ‘body corporate and politic’ for the purposes set forth in the Housing Authority Law. As such a statutory body or commission, it has such powers, and only such powers, particularly with reference to the expenditure of public funds, as are expressly granted by statute, and such powers as may be necessary and convenient (Sec. 1078-34 G. C., par. d) to carry the powers expressly granted into effect.”

And in Opinions of the Attorney General for 1941, No. 3650, the then Attorney General quoted with approval from the 1940 opinion above noted, with regard to the powers of a metropolitan housing authority.

An examination of the statutes, Sections 1078-30 to 1078-50, inclusive, General Code, does not disclose any specific grant of power to a housing authority to expend its funds for purchasing retirement annuities or death benefits for its employees. Your attention is directed, however, to Section 1078-31, General Code, which provides as follows:

“Said housing authority shall be organized by electing one of its number chairman, and another vice-chairman, and shall have power to employ counsel, a director who shall be ex-officio secretary, and such other officers and employees as may be desired, and shall fix the term of office, qualifications and compensation of each.”

Most certainly the housing authority may not, as a gratuity, purchase such annuities and death benefits. While your letter does not expressly so state, I am assuming that the housing authority is not giving a gratuity, but as part of its employment contract with its employees, and as part of the compensation to be paid such employees, agrees to purchase such retirement annuities and death benefits, and in furtherance of this employment agreement enters into an agreement with a company engaged in that kind of business and pays the premiums therefor to such company.

It is submitted that Section 1078-31, General Code, is broad enough to include this power when such retirement annuities and death benefits are provided as part of the compensation granted to its employees.

A similar question was before the Attorney General in 1941 (see

Opinions of the Attorney General for 1941, No. 3650, which has been previously noted), wherein the then Attorney General held as follows:

“Whether or not a metropolitan authority may expend funds under its control for the purpose of paying the premiums on liability and property damage insurance covering employes’ automobiles which such employes occasionally use in carrying out the business of such Authority, and whether or not it may expend its funds for the purpose of buying dinners for employes when working overtime, are questions of fact depending upon the contracts of employment made with such employes. Such an Authority may not expend funds under its control for the purpose of paying such premiums or for the purpose of buying dinners for employes, or for others, as a mere gratuity.”

In that opinion the Attorney General referred with approval to Opinions of the Attorney General for 1928, Vol. II, page 1099, wherein it was held that:

“The legislative authority of a village may, as a part of the compensation to its employes, legally authorize group indemnity insurance and pay the premium therefor from public funds.”

I am therefore of the opinion that a Metropolitan Housing Authority has the authority to expend funds under its control for the purpose of purchasing retirement annuities and death benefits for its employes when such is part of the contract of employment with its employes.

Respectfully,

HUGH S. JENKINS,
Attorney General.